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8
UNITED STATES DISTRICT COURT
9
FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 PHILIP SMITH, an individual,
11 Plaintiff,
12 v.
13 RYAN COMPTON, an individual;
14 NOEL ANDREWS, an individual;
15 MONA VOGEL, an individual; and
DOES 1-10, inclusive,
16 Defendants.

17 Case No.: 2:22-cv-08439-MWF-PLA
18
19

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT
NOEL ANDREWS' MOTION TO
DISMISS RE SPECIAL MOTION
TO STRIKE THE FIRST AMENDED
COMPLAINT (ANTI-SLAPP)**

Hearing Date: January 23, 2023
Time: 10:00 AM
Courtroom: 5A

(Declarations of Philip Smith and Daniel A. Crawford, Esq., and Plaintiffs' Evidentiary Objections, filed concurrently herewith)

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11	<i>Cal. Penal Code</i> Section 539.5(a).	13, n.3

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1 **I. INTRODUCTION**

2 Plaintiff PHILIP SMITH hereby opposes in its entirety the “Special Motion To
 3 Strike the First Amended Complaint per Fed. R. Civ. P. 12(B)(6) and CCP § 425.16
 4 & Request For Sanctions” (the “anti-SLAPP motion”) of Defendant NOEL
 5 ANDREWS, challenging the first, second, third, fourth, fifth, sixth, eleventh, twelfth,
 6 thirteenth, and fourteenth causes of action in the First Amended Complaint (“FAC”).

7 Additionally, Plaintiff contends the motion is frivolous or solely intended to
 8 cause unnecessary delay and cost, and requests an award of attorney’s fees and costs
 9 in the amount of \$24,030.50. *Code Civ. Proc.* §425.16(c)(1).

10 Defendant Andrews attacks the FAC as though it is all about negative internet
 11 posts and criminal accusations. But this case has almost nothing to do with that. The
 12 case is about invasion of privacy, identity theft, and intellectual and personal property
 13 theft. It is also about threats to Plaintiff and *targeted* libelous messages to individuals
 14 close to him. In other words, this case is about non-public and *overtly illegal*
 15 conduct, which is not protected by the First Amendment or the anti-SLAPP law.

16 There are isolated general allegations in the FAC that Defendants posted
 17 negative (and false) information online which was viewable by the public at large.
 18 However, Defendant’s motion is not limited to particular allegations (and does not
 19 identify any particular allegations to be stricken) but directed to entire causes of
 20 action. Every one of those challenged causes of action is based mostly or entirely on
 21 unprotected conduct. As a result, even if some isolated allegations could have been
 22 stricken with a different motion, no cause of action pleaded in the FAC could be
 23 stricken through an anti-SLAPP motion.

24 To the extent Defendant meets her burden on any part of the motion, Plaintiff’s
 25 evidence makes a sufficient *prima facie* showing for a favorable judgment.

26 Finally, Andrews’ motion appears to be designed solely to cause delay and
 27 increase Plaintiff’s costs. It is not combined with any other request for relief (such as

1 a demurrer or a regular motion to strike), so it should be entirely fruitless. And, even
2 if the motion had been targeted to specific allegations of protected activity, it would
3 not have eliminated any cause of action or excused any defendant from the case.

4 Plaintiff should be awarded his costs and fees for opposing this motion.

5 **II. RESPONSE TO DEFENDANT'S STATEMENT OF FACTS**

6 It would be wasteful for Plaintiff to submit his own complete account of the
7 factual history between the parties. Nevertheless, there are some proffered facts in
8 Defendant Andrews' Statement of Facts which Plaintiff will address.

9 **A. Plaintiff's Other Cases are Irrelevant.**

10 First, Defendant notes that Plaintiff has initiated several other judicial actions
11 against Defendants Mona Vogel and Ryan Compton within the last year, including
12 two unsuccessful applications for domestic violence restraining orders (DVRO) and
13 one civil action pending in the California Superior Court.

14 That is all true, but irrelevant. Defendant Andrews, the movant here, was not
15 involved in those actions (and does not claim any issues in this case are foreclosed by
16 issue- or claim-preclusion rules). Regarding the DVRO cases, obviously those sought
17 very different relief than Plaintiff seeks here, under different standards. Plaintiff
18 dismissed the DVRO action against Vogel after the parties reached an agreement.

19 *Declaration of Philip Smith* ("P.Smith Decl.") ¶4. The DVRO application against
20 Compton was denied because that court found Plaintiff failed to meet his burden *with*
21 *respect to Compton*. Also, any findings or rulings in those DVRO cases are hearsay.¹

22 The pending civil action against Vogel and others arises from conduct by those
23 defendants which is (mostly) separate and distinct from the conduct alleged in the
24 FAC. No party is seeking to relate, consolidate or combine the cases, and that
25 pending state court action is also irrelevant here.

26
27
28 ¹ Plaintiffs' objections to Defendants' evidence are submitted herewith.

It appears Defendant's only reason for raising those unrelated matters is to prejudice the Court against Plaintiff on this motion.

B. Plaintiff Does Not Describe Himself as “Well-Known.”

Next, Defendant asserts that “Plaintiff describes himself as a well-known person in the music industry.” Memo. P&A, 7:8-9. That is not true. In paragraph 14 of the FAC, which Defendant cites, Plaintiff Smith alleges:

14. SMITH is a commercial artist, musician and entrepreneur. As of 2021, SMITH had worked, and had ongoing relationships, with numerous successful bands, musicians, production companies including Warner Brothers Records, and other music industry personnel throughout Los Angeles and California.

Thus, in paragraph 14 (and elsewhere in the FAC, and in his previous testimony) Plaintiff alleges that he works successfully in the music and art industries, just like thousands of others in Los Angeles. He does not contend he is “well-known.”

The distinction is important because of the differing standards for public figures under First Amendment law. In the anti-SLAPP context, statements about a “well-known” figure would more easily arise to a level of protected matters of public interest and protected conduct than statements about non-public, private individuals, like Plaintiff. *Rivero v. Amer. Fed. of State, County, & Muni. Employees*, 105 Cal.App.4th 913, 924 (2003). There is nothing in the FAC or the evidence showing Plaintiff is well known or public figure.

C. Plaintiff Did Not Exonerate Andrews with his Previous Testimony.

Defendant also asserts that Plaintiff admitted she, Defendant Andrews, was not involved in posting a certain private recording onto a social media site. Notably, even if Andrews were exonerated from posting a video, she would not be absolved of liability on any of Plaintiff's claims. Plaintiff alleged that Andrews was complicit with the other defendants in most of the wrongful conduct against him. FAC ¶¶10-13.

Defendant's assertion is also wrong. Defendant apparently refers to an allegation in paragraph 32 of the FAC:

1 32. Defendants obtained and posted an audio recording of a private
 2 argument SMITH had with ANDREWS during their child custody
 3 dispute. The recording was apparently made by ANDREWS but was
 4 without SMITH's knowledge or consent. SMITH never consented to
 publishing the recording either.

5 But the evidence cited by Defendant does not support that assertion. In fact, in
 6 the context of his DVRO hearing against Compton, Plaintiff testified he believed, or
 7 even 'knew' Andrews had not publicized the recording simply because: 1) he
 8 believed it would not be in her interests to have done so; and, 2) she told him she did
 9 not do it. In other words, his testimony was based on speculation and hearsay. That
 10 is not admissible evidence, and does not contribute to Defendant's motion.

11 **III. ARGUMENT**

12 Plaintiff assumes the Court is familiar with anti-SLAPP motions and offers
 13 only the following summary:

14 Section 425.16 requires that a court engage in a simple, two-step
 15 process in ruling on a special motion to strike. First, the court must
 16 decide whether the defendant has made a sufficient threshold showing
 17 that the challenged cause of action is subject to a special motion to
 18 strike. Second, if the threshold showing has been made, the court must
 19 determine whether the plaintiff has demonstrated sufficient minimal
 20 merit to be allowed to proceed. (*Navellier v. Sletten, supra*, 29 Cal.4th
 21 [82] at p. 89, 124 Cal.Rptr.2d 530, 52 P.3d 703 [2002]; *Equilon*
 22 *Enterprises v. Consumer Cause, Inc., supra*, 29 Cal.4th [55] at p. 67, 124
 23 Cal.Rptr.2d 507, 52 P.3d 685 [2002].) Nothing outside of this two-step
 24 process is relevant. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78,
 25 124 Cal.Rptr.2d 519, 52 P.3d 695; *Equilon Enterprises v. Consumer*
 26 *Cause, Inc., supra*, 29 Cal.4th at p. 66, 124 Cal.Rptr.2d 507, 52 P.3d
 27 685.)

28 *Weinberg v. Feisel*, 110 Cal.App.4th 1122, 1130 (2003). The defendant has the
 burden of showing the cause of action arises from activity protected under the statute.
Blackburn v. Brady, 116 Cal. App. 4th 670, 675 (2004).

1 In this case Defendant does not meet her initial threshold because none of the
 2 challenged conduct is protected. It involves only non-public issues. In any event,
 3 Plaintiff's evidence shows a likelihood he will prevail.²

4 **A. Defendants' Alleged Conduct Does Not Concern Public Issues and is
 5 Not Protected under the Anti-SLAPP Law.**

6 **1. Only Speech or Conduct Connected to Public Issues or of Public
 7 Interest is Protected by the Anti-SLAPP Statute.**

8 Defendant generally cites paragraphs 29, 31, 32, 33, 34, 35, 36, 40 and 55 of
 9 the FAC as the allegations of information Defendants published about Plaintiff. *See*
 10 Defendant's Memorandum of Points and Authorities ("Memo P&A"), 8:1-21.
 11 Apparently, the allegations in those paragraphs are the purportedly offending facts on
 12 which the anti-SLAPP motion is based.

13 However, Defendant does not address the actual facts alleged in those
 14 paragraphs. The allegations in the FAC cited by Defendant do not constitute
 15 protected activity. Not all speech-based claims are prohibited by the anti-SLAPP law,
 16 only speech activity that is "in connection with a public issue." *Code Civ. Proc.*
 17 §425.16(b)(1). Defendant contends (Memo P&A 12:7-19) that the publications
 18 alleged in the FAC fall under the fourth category of protected speech activity listed in
 19 the statute: "(4) any other conduct in furtherance of the exercise of the constitutional
 20 right of petition or the constitutional right of free speech in connection with a public
 21 issue or an issue of public interest." *Code Civ. Proc.* §425.16(e). If speech conduct
 22 is not "in connection with a public issue or an issue of public interest" then it is not
 23 protected under the anti-SLAPP law.

24 There are generally three categories of public issues which qualify for
 25 protection under the anti-SLAPP statute: 1) statements concerning a person in the
 26

27 ² Plaintiff does not argue the challenged allegations are incidental because Defendant
 28 does not identify any precise allegations, only whole paragraphs. Also, Defendants'

1 public eye; 2) conduct that could directly affect a large number of people beyond the
 2 direct participants; or, 3) or a topic of widespread, public interest. *Rivero*, 105
 3 Cal.App.4th at 924.

4 Regarding the third category, topics of widespread public interest, there are
 5 “guiding principals” for determining what is or is not a public matter or legitimate
 6 issue of public interest.

7 First, “public interest” does not equate with mere curiosity. [citations
 8 omitted] Second, a matter of public interest should be something of
 9 concern to a substantial number of people. [citations omitted] Thus, a
 10 matter of concern to the speaker and a relatively small, specific audience
 11 is not a matter of public interest. [citations omitted] Third, there should
 12 be some degree of closeness between the challenged statements and the
 13 asserted public interest [citations omitted]; the assertion of a broad and
 14 amorphous public interest is not sufficient [citations omitted] Fourth, the
 15 focus of the speaker's conduct should be the public interest rather than a
 16 mere effort “to gather ammunition for another round of [private]
 17 controversy.... [citations omitted] Finally, “those charged with
 18 defamation cannot, by their own conduct, create their own defense by
 19 making the claimant a public figure.” [citations omitted] A person
 20 cannot turn otherwise private information into a matter of public interest
 21 simply by communicating it to a large number of people.

22 *Weinberg v. Feisel*, 110 Cal.App.4th 1122, 1132-33 (2003).

23 In evaluating the first prong of the anti-SLAPP statute, a court must focus on
 24 “the *specific nature of the speech* rather than the generalities that might be abstracted
 25 from it. [Citation.]” *World Financial Group, Inc. v. HBW Ins. & Financial Services,*
 26 *Inc.*, 172 Cal.App.4th 1561, 1570 (2009).

27 **2. On Their Face All but One of the Paragraphs of the FAC
 28 Challenged by Defendant are Concerned with Non-Public Matters.**

29 Defendant cites paragraphs 29, 31, 32, 33, 34, 35, 36, 40 and 55 as the location
 30 of the offending allegations in the FAC. Although Defendant does not identify any
 31 specific allegations in those paragraphs which she claims are protected, the Court’s

32 false and damaging messages to the specific, select group around and associated with
 33 Plaintiff are not incidental to Plaintiff’s claims.

inquiry should not go beyond the paragraphs Defendant listed. *Baral v. Schnitt*, 1 Cal.5th 376, 396 (2016) (moving defendant bears the burden of identifying all allegations of protected activity and claims for relief supported by them).

For all of the paragraphs Defendant listed except 36 (discussed below) the very language of the allegations is limited to non-public matters. In other words, when the allegations are considered for the “specific nature of the speech rather than the generalities that might be abstracted” those allegations do not qualify as statements “in connection with a public issue or an issue of public interest” which would qualify for anti-SLAPP protection.

21 **b. Paragraph 31.** There are two allegations of conduct in this
22 paragraph. First, “Defendants have stolen and published private information and
23 images from SMITH’s life...” There is nothing about that allegation from which the
24 Court could find it involves a matter of public interest. The information is not
25 described at all, except as “private information.” Smith is not a public figure. The
26 allegation that Defendants published unspecified private information does not involve
27 protected activity.

1 The second allegation in paragraph 31 is: “Defendants obtained a recording of
 2 SMITH’s deceased grandfather, Richard Hamilton, in which the decedent had
 3 inquired about the wellbeing of SMITH’s son... then sent copies of that voicemail
 4 message from SMITH’s deceased grandfather to SMITH, to members of his family
 5 including his grandmother, and to his friends and associates. Defendants sometimes
 6 sent that voicemail as an attachment from an email account they created with the
 7 address Hamilton.richard094@gmail.com.” Again, that involves the publication of
 8 purely private matters.³ Smith’s grandfather was not a public figure. Moreover, the
 9 allegation is that Defendants resent the voicemail to a small, specifically targeted
 10 group of people. That is not a matter of public interest.

11 **c. Paragraph 32.** The alleged conduct is: “Defendants obtained and
 12 posted an audio recording of a private argument SMITH had with ANDREWS during
 13 their child custody dispute.” There is nothing there which involves a public issue or
 14 matter. Neither Smith nor Andrews are public figures, and the subject does not affect
 15 anyone beyond the parties and their children. The only way that could involve a
 16 matter of public interest is because Defendants took “otherwise private information”
 17 and put into some public sphere. That does not make it a public issue. *Weinberg*, 110
 18 Cal.App.4th at 1133.

19 **d. Paragraph 33.** The allegation is “Defendants have also posted
 20 personal, private video clips from SMITH’s life, from as far back as his teenage
 21 years...” Again, Smith is not a public figure and there is nothing from this allegation
 22 which suggests the postings involve public issues. The only description of the
 23 postings is that they included “personal, private video clips from SMITH’s life...”
 24 While such material may be interesting to some viewers, that does not create a public
 25
 26

27 ³ This also alleges criminal conduct by Defendants. Identity theft includes deceased
 28 persons. *Cal. Penal Code* §539.5(a).

1 issue. “ ‘[P]ublic interest’ does not equate with mere curiosity...” *Weinberg*, 110
 2 Cal.App.4th at 1132.

3 **e. Paragraph 34.** The allegation in this paragraph is “Defendants have
 4 published false information about SMITH which is designed to harm his personal and
 5 business reputation, and to cause him personal distress.” There is nothing in those
 6 facts which suggests protected activity concerning a public matter or issue. The only
 7 information about the false publications is that they were “about SMITH” and
 8 designed to hurt him and his business. Even if the Court were to assume the
 9 allegations were about SMITH’s business dealings, that would only rise to a level of a
 10 public issue if it went “beyond a particular interaction between the parties and
 11 implicate[d] matters of public concern that can affect many people...” *Wong v. Jing*,
 12 189 Cal.App.4th 1354, 1366 (2010). There is nothing to support that conclusion.

13 **f. Paragraph 35.** The allegation is “When Defendants were not sending
 14 those messages from email accounts impersonating SMITH himself or his company”
 15 they were sending the messages from their own accounts.

16 The preceding paragraphs in the FAC include allegations that Defendants sent
 17 and posted at least some material that was entirely private. This paragraph does not
 18 specify what type of information was sent, and it specifically refers to “messages.”.
 19 Messages are generally sent to a small, specific audience, unlike “postings” to social
 20 media or internet sites. There is nothing about the allegation here to suggest a public
 21 matter or protected activity.

22 **g. Paragraph 40.** This paragraph alleges “Defendants have tracked
 23 SMITH’s travels and published information about his movements, including tagging
 24 hotels and locations where he has stayed and even businesses he has visited.
 25 Defendants have also tracked and publicized SMITH’s internet browsing history.”
 26 Again, because Smith is not a public figure, and his whereabouts and browsing

1 history do not inherently involve public issues, there is nothing in this paragraph
 2 which shows protected activity.

3 **h. Paragraph 55.** This paragraph alleges: “Defendants posted
 4 messages on social media sites and internet forums frequented by NFT market
 5 participants disparaging SMITH, claiming he was dishonest or untrustworthy, that he
 6 did not pay on the deals he made, and otherwise damaging his reputation.”

7 Publication of information about private disputes to a specific audience does not
 8 create a public issue. *Weinberg*, 110 Cal.App.4th at 1134. This paragraph also does
 9 not allege protected conduct.

10 **3. Paragraph 36 of the FAC Does Not Allege Conduct in Connection
 11 with a Public Matter.**

12 As discussed above, all but one of the paragraphs that Defendant listed simply
 13 do not allege any conduct in connection with a public issue or matter of public
 14 interest. Only paragraph 36 of the FAC contains any allegations which could be read
 15 abstractly to concern matters of public interest. That paragraph alleges:

16 The messages Defendants sent, either while impersonating SMITH
 17 himself or to SMITH’s contacts from other accounts, to [sic]⁴ published
 18 broadly to the general public, were false, misleading, damaging, and
 19 implied or stated that SMITH engaged in illegal, offensive and
 20 defamatory conduct. Some of those messages that Defendants sent stated
 that SMITH was abusive, violent in nature, had committed violence
 against women including rape, was “a predator” who stalks and abuses
 women, was dishonest, a heroin dealer, and possibly murderous.

21 This paragraph does allege, in part, that Defendants published statements
 22 “broadly to the general public,” and that some of those statements charged that
 23 Plaintiff was violent, criminal and dishonest. But this paragraph 36 still does not
 24 allege conduct in connection with a public issue or an issue of public interest, as
 25 required for anti-SLAPP protection.

26
 27
 28 ⁴ This was a typographical error. The allegation should state “or published...”

1 **a. Criminal Accusations are Not Automatically Public Matters.**

2 Defamation of an individual is not protected by the constitutional right of free
 3 speech. *Beauharnais v. Illinois*, 343 U.S. 250, 254–256 (1952). Merely defamatory
 4 statements are not conduct “in furtherance of the exercise of the constitutional right of
 5 petition or the constitutional right of free speech.” *Code Civ. Proc.* §425.16(b).

6 In paragraph 36, Plaintiff alleges Defendants published defamatory statements
 7 accusing him of serious crimes. But even statements that a plaintiff was involved
 8 criminal conduct do not necessarily concern public issues or issues of legitimate
 9 public interest. In *Weinberg v. Feisel, supra*, the plaintiff alleged the defendant had
 10 made false statements in publications and letters accusing him of stealing a valuable
 11 item, having a violent temper, being dishonest, and stating that people were in fear for
 12 their lives. Based on those allegations, the plaintiff asserted claims for libel, slander
 13 and intentional infliction of emotional distress (“IIED”).

14 The defendant brought an anti-SLAPP motion, asserting the published
 15 statements were connected to public issues or matters of public interest because the
 16 statements concerned the plaintiff’s criminal activity. The defendant argued that the
 17 statements warned other potential victims about the plaintiff’s thieving and violent
 18 ways, and allowed them to protect themselves and their property. The defendant also
 19 argued the statements could encourage past victims to come forward with information
 20 about the plaintiff so he could be prosecuted. *Id.* at 1126.

21 The trial court denied the anti-SLAPP motion, and the appellate court affirmed
 22 on ground the alleged statements actually were not in connection with any public
 23 issue or legitimate issue of public concern. That court noted that the defendant had
 24 not reported his suspicions about the plaintiff to any law enforcement agency and was
 25 not intending to. The court also noted the plaintiff was not a public figure, and that
 26 the defendant accusing him of criminal conduct “did not make the accusations a
 27 matter of public interest.” *Weinberg*, 110 Cal.App.4th at 1135.

1 That court summarized the relationship between allegations of criminal
 2 conduct and the anti-SLAPP law succinctly:

3 Simply stated, causes of action arising out of false allegations of
 4 criminal conduct, made under circumstances like those alleged in this
 5 case, are not subject to the anti-SLAPP statute. Otherwise, wrongful
 6 accusations of criminal conduct, which are among the most clear and
 7 egregious types of defamatory statements, automatically would be
 8 accorded the most stringent protections provided by law, without regard
 9 to the circumstances in which they were made—a result that would be
 10 inconsistent with the purpose of the anti-SLAPP statute and would
 11 unduly undermine the protection accorded by paragraph 1 of Civil Code
 12 section 46, which includes as slander any false and unprivileged
 13 communication charging a person with a crime, and the California rule
 14 that false accusations of crime are libel per se (*Civ. Code*, § 45a; 5
 15 *Witkin, Summary of Cal. Law* (9th ed. 1988) Torts, § 482, p. 566).

16 *Weinberg*, 110 Cal.App.4th at 1136.

17 In this case, in paragraph 36, Plaintiff alleges Defendants accused him of
 18 serious criminal conduct, including dishonesty, violence and abuse toward women,
 19 rape, dealing heroin and being “possibly murderous.” Those accusations, suggesting
 20 some of the vilest and basest crimes, are egregiously defamatory. However, just as in
 21 *Weinberg*, there is no evidence that Plaintiff has ever been convicted, charged,
 22 investigated or even accused of any such crimes, by Defendants or anyone else. The
 23 mere fact that Defendants published such accusations on YouTube or social media
 24 sites does not make those accusations matters of legitimate public interest.

25 Defendant asserts, just like the moving defendant in *Weinberg* asserted, that
 26 statements about Plaintiff could warn others, presumably so they could protect
 27 themselves. Specifically, Defendant argues:

28 These postings on social media could, and allegedly were intended to,
 29 affect people beyond the direct participants regarding issues that the
 30 public takes a great interest in – rape, murder, stalking, abuse of women,
 31 and drug dealing...the comments were meant to be read by people in the
 32 music, arts, and entertainment industries and express concerns in these
 33 readers’ minds about a thoroughly dangerous person who is in extremely

1 close proximity to members of touring bands, Grammy winners, and
 2 inductees into the Rock and Roll Hall of Fame.⁵

3 However, those vague arguments that Defendants' published statements serve
 4 as a warning about a dangerous criminal still do not bring Defendants' speech-
 5 conduct within the ambit of public issues. Plaintiff is not a convicted sex offender or
 6 other felon, or even facing criminal charges which might be a matter of public
 7 concern. Instead, as in *Weinberg*, the mere fact that Defendants published statements
 8 accusing Plaintiff of serious crimes and criminal tendencies does not make those
 9 statements matters of legitimate public interest or suitable for anti-SLAPP protection.

10 **b. Allegations of Sex-Crimes are Not Automatically Public Matters
 or Issues.**

11 Defendant seems to argue that because the accusations about Plaintiff were
 12 about sex crimes, they must enjoy a special status and be matters of public concern.
 13 Specifically, Defendant asserts: "Accusations of stalking, sexual harassment, rape,
 14 and murder are issues of public interest." Memo. P&A 15:7-8. However, the
 15 controlling authorities, and most of the cases Defendant cites, do not support that
 16 proposition.

17 In *Doe v. Gangland Productions, Inc.*, 730 F.3d 946, 955 (9th Cir. 2013), cited
 18 by Defendant, the plaintiff had appeared voluntarily on a television show about gang
 19 violence in Los Angeles. After the broadcast, the plaintiff claimed the producers had
 20 breached an agreement to obscure his image and voice. When he sued based on that
 21 claim, the defendant producers made an anti-SLAPP motion. In that situation—
 22 involving a television show about a criminal culture affecting large swaths of a major
 23

24 ⁵ The fact that Plaintiff is involved in the music and entertainment industries, and even
 25 crediting that he may be "fame-adjacent," working with Grammy winners and famous
 26 people, does not make him a public figure. Mr. Smith records music and is attempting
 27 to sell a new line of instruments. In other words, with due respect to his considerable
 28 efforts, Plaintiff is another one of thousands of nameless, faceless gig-workers and
 strivers in Los Angeles, the music and entertainment capital of the world.

1 city—the court held that the production was connected to issues of public interest and
2 fell under the anti-SLAPP law. *Id.* 730 F.3d at 955. The crimes discussed on the
3 show included murder, but that was not what made the broadcast a matter of public
4 interest. Overall, the facts of the *Gangland* case have little instructive value for the
5 present case.

6 Defendant next cites an unreported district court opinion in *Steep Hill*
7 *Laboratories, Inc. v. Moore*, 2018 WL 1242182 (2018). In that case, a disgruntled
8 former employee published statements over the internet and using paper flyers
9 accusing his former boss of various disreputable traits and behavior, including sexual
10 harassment and predation. The defendant sued the former employee for defamation
11 and other torts, and the employee brought an anti-SLAPP motion.

12 Notably, both the district court and the Ninth Circuit held that the employee’s
13 statements *did not* constitute public issues or matters of public interest. Instead, both
14 courts held that the plaintiff’s statements were non-public-issue statements and were
15 not protected by the anti-SLAPP statute. The district court confirmed that claims of
16 private sexual harassment, theft and bribe-taking were all private matters. 2018 WL
17 1242182, at *7. The district court also noted the plaintiff’s statements did not
18 encourage an ongoing discussion of any matter of public significance, and were non-
19 public for that reason too. *Id.* Nothing in either the district court’s order or the
20 appellate court’s unpublished affirmance suggested that accusations of criminal
21 conduct or sex-related crimes were necessarily matters of public interest, as
22 Defendant asserts.

23 Sex-related crimes *against minors* are generally matters of public interest, and
24 statements and accusations about adults who commit those crimes are protected under
25 the anti-SLAPP statute. *Cross v. Cooper*, 197 Cal.App.4th 357, 379 (2011). That

1 was the rule applied in *Lacoste v. Keem* (C.D. Cal., June 23, 2020) 2020 WL
 2 5239110, which Defendant cites.

3 In *Cross* (which Defendant did not discuss) the court specifically distinguished
 4 the rule of *Weinberg* and explained why statements about sex offenders involved
 5 much more than a “broad and amorphous public interest” but were “a subject
 6 specifically and directly related to an issue of compelling and widespread [public]
 7 interest.” *Cross*, 197 Cal.App.4th at 379. But there was no statement in *Cross* (or in
 8 *Lacoste*) that sex-based crimes strictly involving adults are matters of public interest,
 9 as Defendants now suggest.

10 In the present case, Defendants made statements accusing Plaintiff of various
 11 sex-related crimes, even including rape. However, there is no suggestion anywhere in
 12 the FAC or the evidence before the Court that Plaintiff has committed, or is accused
 13 of committing, any crimes of any types against children, or that he is a convicted sex
 14 offender. The narrow rule established in *Cross* and applied in *Lacoste* have no
 15 application in this case.

16 The unpublished order cited by Defendant from *Todd v. Lovecraft* (N.D. Cal.,
 17 Jan. 6, 2020) 2020 WL 60199, does state that mere allegations of sexual assault are
 18 matters of public interest. However, that court derives its position from the rule
 19 applied in *Lacoste*, that accusations of sexual crimes *by adults against minors* are
 20 matters of public interest. Then the *Todd* court simply expands that rule to all sexual
 21 crimes, without analysis and with no attempt to distinguish *Weinberg*.

22 But the *Todd* order is not binding and should be afforded no weight (the same
 23 is true for the unpublished *Steep Hill* order). When considering an issue of California
 24 substantive law, such as the application of California’s anti-SLAPP law, federal
 25 district courts are “obligated to follow the decisions of the state’s intermediate
 26 appellate courts” unless there is “convincing evidence that the state supreme court
 27 would decide differently.” *Bliss Sequoia Ins. & Risk Advisors, Inc. v. Allied Property*
 28

& Casualty Ins. Co., 52 F.4th 417, 419 (9th Cir. 2022). Also, even if the *Todd* order were published, it would not be precedential or binding on this Court. *Hart v. Massanari*, 266 F.3d 1155, 1174 (9th Cir. 2001). Because *Todd* was an unpublished district court order which is contrary to the decisional law of California courts on a point of state law, it should be ignored.

B. None of the Causes of Action which Defendant Challenges are Based on Protected Activity.

Plaintiff contends that none of the conduct attributed to Defendants in the FAC is protected. However, assuming *arguendo* that some allegations are protected and may be stricken, that would not eliminate any entire cause of action, as Defendant demands.

1. First Cause Of Action – Invasion Of Privacy.

This claim is based on Defendants hacking, reading, copying and publicizing Plaintiff's email accounts, voicemail messages, internet-based accounts with Dropbox, Instagram, Venmo, IDme.com and other websites, his *non-public* social media posts, and his internet browsing history. First, even if some publications by Defendants were protected under the anti-SLAPP law, Defendants' hacking and copying of Plaintiff's private information is not, so this claim should survive even if Defendant's motion were granted.

Also, the sources Defendants invaded—email accounts, voicemail messages, etcetera—are private and have no connection to any matters of public interest, so publishing materials stolen from those sources should not be protected.

2. Second Cause Of Action – False Light.

Here Plaintiff alleges that Defendants published disparaging, false statements to his “family, friends, and customers and colleagues in the music and art industries.” FAC ¶66, 13:7-8.

All of those groups are limited and specifically targeted. Whatever false statements Defendants published, those concerned only Plaintiff and a relatively

1 small, specific audience, and were not a matter of public interest. *Weinberg, supra*,
2 110 Cal.App.4th at 1132. The conduct underlying this cause of action is not protected.

3 **3. Third Cause of Action – Misappropriation of Plaintiff’s Name.**

4 The basis of Plaintiff’s third claim is that Defendants “intentionally
5 misappropriated Plaintiff’s name and/or sobriquet, and used that misappropriated
6 identity to their advantage to, among other things, advance their conspiracy to harm
7 Plaintiff personally and economically.” FAC ¶72, 13:22-24.

8 Plaintiff’s name is not a public issue or a matter of public interest. He is not a
9 celebrity or public figure. Using his identity to impersonate him does not create a
10 matter of public interest. This claim is not based on protected activity.

11 **4. Fourth Cause of Action – Online False Impersonation.**

12 Plaintiff alleges Defendants “impersonated Plaintiff on multiple internet
13 websites and email accounts” for the purpose of “harming, intimidating, threatening,
14 or defrauding Plaintiff and others.” FAC ¶77-78, 14:10-14.

15 Again, Plaintiff’s identity is entirely a private matter. Also, Defendants’ illegal
16 use of Plaintiff’s identity was directed toward Plaintiff and a select, targeted audience.
17 That did not create a public issue, and the conduct underlying this claim was not
18 protected speech. *Weinberg, supra*, 110 Cal.App.4th at 1132.

19 **5. Fifth Cause of Action – Libel.**

20 Plaintiff alleges “Defendants knowingly published disparaging, false written
21 statements to Plaintiff’s family, friends, and customers and colleagues in the music
22 and art industries.” FAC ¶82, 14:22-24.

23 As demonstrated herein, at least some of the material Defendants published
24 was non-public and not connected to issues of public concern, so at least some
25 publications were not protected. Also, the publications alleged here are to a specific,
26 relatively small group comprising Plaintiff’s family, friends, associates and
27 customers. Publication to a select group of material concerning a specific audience

1 does not rise to a protected issue of public concern. *Weinberg, supra*, 110
 2 Cal.App.4th at 1132.

3 Even assuming *arguendo* that some publications to Plaintiff's customers could
 4 be considered a wide enough distribution to be a public matter, most of the tortious
 5 conduct upon which this claim is based is not protected and the entire claim cannot be
 6 stricken.

7 **6. Sixth Cause of Action – IIED.**

8 Plaintiff alleges Defendants harmed him by “electronically stalking and
 9 harassing Plaintiff, impersonating him online, defaming him to his friends, family and
 10 colleagues, portraying him as a criminal, liar and cheat, hacking and intruding to his
 11 private accounts and communications, and stealing his personal property...” FAC
 12 ¶88, 15:12-15.

13 Defendants' statements portraying Plaintiff as a criminal and liar could be
 14 protected activity under the anti-SLAPP law (although it should not be based on the
 15 authorities discussed herein). However, even assuming *arguendo* that conduct was
 16 deemed protected and those allegations were stricken, this claim would still be viable
 17 based on Defendants' unprotected activities: stalking, harassing, hacking Plaintiff's
 18 private accounts, stealing his personal property and communicating to the select
 19 group of his friends, family and colleagues. Even if Defendant's anti-SLAPP motion
 20 were granted, this cause of action should not be stricken.

21 **7. Eleventh and Twelfth Causes of Action – Interference with
 22 Contractual Relationships.**

23 Both the eleventh and twelfth claims are based on interference with Plaintiff's
 24 relationship with one specific company: Caveman Records. The claims do leave
 25 open the possibility of other contractual relationships. But at least as far as Plaintiff's
 26 relationship with Caveman Records, whatever Defendants said or published
 27 concerned only a very select, specific audience. That does not rise to a matter of

1 public interest, and these causes of action are not based on protected conduct under
 2 the anti-SLAPP law. *Weinberg, supra*, 110 Cal.App.4th at 1132.

3 **8. Thirteenth and Fourteenth Causes of Action – Interference with
 4 Prospective Economic Relationships.**

5 There is no specific conduct alleged for these claims, and they are based (as
 6 pleaded) on the entirety of Defendants' wrongful or tortious activities. For the
 7 reasons discussed herein, Plaintiff asserts that none of the conduct attributed to
 8 Defendants in the FAC is protected speech activity under the anti-SLAPP law.

9 However, even assuming *arguendo* that some of Defendants' publications were
 10 protected, it is still the case that *most of Defendants' conduct was simply not*
 11 *protected* under the anti-SLAPP law. Some of the alleged conduct was not even
 12 speech-related. But most of Defendants' conduct was directed to a small, specific
 13 audience and involved strictly private issues (such as Plaintiff's voicemail messages
 14 or the recording of his dispute with Andrews years earlier) which could not arise to
 15 matters of public interest or concern. Even if Defendant's motion is granted, these
 16 claims should also remain.

17 **C. Plaintiff's Evidence Establishes a Probability of Success.**

18 Assuming *arguendo* that some of Defendants' conduct is somehow connected
 19 to matters of public interest or public issues, so that Defendant satisfies her initial
 20 burden for some part of the motion, Plaintiff's evidence submitted herewith
 21 establishes a sufficient probability of prevailing on his claims.

22 The second step of the anti-SLAPP inquiry is a "summary-judgment-like
 23 procedure" and the burden on the plaintiff is not great. *Baral v. Schnitt*, 1 Cal.5th
 24 376, 384 (2016). To establish a "probability" of prevailing, the plaintiff only must
 25 demonstrate that the challenged claims are legally sufficient and supported by a *prima*
 26 *facie* showing of facts sufficient to support a favorable judgment. *Navellier v. Sletten*,
 27 29 Cal.4th 82, 89, 93 (2002). The court does not weigh evidence, but must accept the
 28 plaintiff's evidence as true. *Baral*, 1 Cal.5th at 384-85.

1 Claims with even minimal merit may proceed. *Navellier*, 29 Cal.4th at 94.
 2 Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that
 3 arises from protected speech *and* lacks even minimal merit—is a SLAPP, subject to
 4 being stricken under the statute. *Id* at 89.

5 Plaintiff’s declaration and exhibits submitted herewith show that Defendants
 6 invaded his privacy, hacked his accounts, impersonated and harassed him and his
 7 family, stole his identity and property, and interfered with his business and personal
 8 relationships. They published disparaging, embarrassing and harmful statements, all
 9 of which were untrue, and they did so knowingly and maliciously, according to the
 10 evidence. By doing all of that, Plaintiff declares, they caused him significant distress
 11 and damages.

12 That evidence, which must be accepted as true now, should be sufficient to
 13 support a favorable judgment and to meet Plaintiff’s burden for this motion.

14 **D. Plaintiff Should be Awarded his Costs and Fees.**

15 If an anti-SLAPP motion is frivolous or “solely intended to cause unnecessary
 16 delay” then a prevailing plaintiff is entitled to an award of costs and attorney’s fees.
 17 *Code Civ. Proc.* §425.16(c)(1).

18 Unfortunately, this motion appears to be frivolous. Defendant acknowledges
 19 her motion can only succeed if the few publications attributed to Defendants are
 20 connected to issues of public interest or concern. However, Defendant’s sole
 21 argument to make that connection is contrary to established law. Defendant writes:
 22 “Accusations of stalking, sexual harassment, rape, and murder are issues of public
 23 interest.” Memo P&A 15:7-8. But *Weinberg* and *Cross* hold otherwise, and they are
 24 binding. *Bliss*, 52 F.4th at 419. *Weinberg* establishes that mere accusations of crimes
 25 are not matters of public interest. 110 Cal.App.4th at 1136. *Cross* specifies the
 26 heightened circumstances which justify the narrow exception to *Weinberg* to make
 27 accusations of sex crimes *against children* matters of public concern. 197

1 Cal.App.4th at 379. No reasonable attorney would believe the accusations against
2 Plaintiff as alleged in the FAC fall in that exception.

3 Notably, not even *Steep Hill*, which Defendant cited, supports her position that
4 accusations of stalking and sexual harassment are public matters.

5 Finally, this motion is pointless. It is not combined with any other request for
6 relief, such as a motion to dismiss. *See Weiland Sliding Doors and Windows, Inc. v.*
7 *Panda Windows and Doors, LLC*, 814 F.Supp.2d 1033, 1039 (S.D. Cal. 2011) (even
8 meritless anti-SLAPP motion was in good faith, thus not frivolous, when combined
9 with motion to dismiss). No cause of action is based entirely or even primarily on any
10 publications to a substantial group. So, even if some of Defendants' publications were
11 deemed protected, only a few isolated allegations would be excised from the FAC.
12 But Defendant would not be exonerated and no single claim would be resolved or
13 stricken—effectively there would be no change the case. The only effect would be to
14 have wasted the time and considerable cost of this motion.

15 Plaintiff will incur not less than \$24,030.50 in attorney's fees and costs opposing
16 this motion. Crawford Declaration ¶12. Plaintiff requests an award in that amount.

17 **IV. CONCLUSION**

18 Based on the foregoing points and authorities, Plaintiff Philip Smith requests
19 that the motion to dismiss by Defendant Noel Andrews be denied in its entirety, that
20 the Court find the motion was frivolous, and that Plaintiff be awarded fees and costs.

21 **RESPECTFULLY SUBMITTED:**

22 Dated: January 4, 2023

CRAWFORD LAW GROUP

23
24 
25

26 DANIEL A. CRAWFORD,
27 Attorney for Plaintiff,
28 PHILIP SMITH

CERTIFICATE OF WORD COUNT

The undersigned, counsel of record for Plaintiff PHILIP SMITH, certifies that this brief contains 6373 words (according to the statistics generated by my word processor), which complies with the word limit of L.R. 11-6.1.

Dated: January 4, 2023

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ATTORNEY(S) FOR: PHILIP SMITH

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PHILIP SMITH, an individual,

Plaintiff(s),

CASE NUMBER:

2:22-cv-08439-MWF-PLA

v.
 RYAN COMPTON, an individual; NOEL
 ANDREWS, an individual; MONA VOGEL, an
 individual; and DOES 1-10, inclusive,

Defendant(s)

**CERTIFICATION AND NOTICE
OF INTERESTED PARTIES
(Local Rule 7.1-1)**

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for PHILIP SMITH
 or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in
 the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification
 or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY	CONNECTION / INTEREST
PHILIP SMITH	PLAINTIFF
RYAN COMPTON	DEFENDANT
NOEL ANDREWS	DEFENDANT
MONA VOGEL	DEFENDANT
DANIEL A. CRAWFORD, ESQ.	ATTORNEY FOR PLAINTIFF
ROZA CRAWFORD, ESQ.	ATTORNEY FOR PLAINTIFF
CHARLES G. SMITH, ESQ.	ATTORNEY FOR DEFENDANT ANDREWS

December 24, 2022

Date



Signature

 Attorney of record for (or name of party appearing in pro per):
 Plaintiff Philip Smith